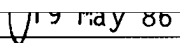


EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:		ACTION	INFO	DATE	INITIAL
1	DCi				
2	DDCI				
3	EXDIR				
4	D/ICS				
5	DDI				
6	DDA				
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/OLL				
14	D/PAO				
15	VC/NIC				
16	NIO/ECON	X			
17	D/OGI		X		
18	C/S		X		
19					
20					
21					
22					
SUSPENSE		Date _____			

Remarks	
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 19 May 86
 Date

**THE WHITE HOUSE
WASHINGTON**

<i>Executive Registry</i>	
86-	2172X

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 5/16/86 **Number:** 317, 120 **Due By:** ----

Subject: Economic Policy Council Meeting - May 19, 1986

1:00 P.M. Roosevelt Room

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEQ	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OSTP	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Svahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HHS	<input type="checkbox"/>	<input type="checkbox"/>	Chew (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HUD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Chief of Staff	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executive Secretary for:		
<u>CIA</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	DPC	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UN	<input type="checkbox"/>	<input type="checkbox"/>	EPC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
USTR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
EPA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GSA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
NASA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OPM	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
SBA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
VA	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

The Economic Policy Council will meet on Monday, May 19, 1986 at 1:00 P.M. in the Roosevelt Room.

The background papers on Gray Market Goods are attached for your review.

RETURN TO:

☒ Alfred H. Kington
Cabinet Secretary
456-2823
(Ground Floor, West Wing)

☐ Don Clarey
☐ Rick Davis
☐ Ed Stucky

Associate Director
Office of Cabinet Affairs
456-2800 (Room 235, OE08)

THE WHITE HOUSE

WASHINGTON

May 16, 1986

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: EUGENE J. McALLISTER *EM*

SUBJECT: Additional Paper for the May 19 Meeting

The paper for the third agenda item at Monday's Economic Policy Council Meeting, gray market goods, is attached. The papers on the other items were circulated earlier.

Attachment

THE WHITE HOUSE

WASHINGTON

May 16, 1986

MEMORANDUM FOR THE ECONOMIC POLICY COUNCIL

FROM: THE WORKING GROUP ON INTELLECTUAL PROPERTY

SUBJECT: Gray Market Goods

The Economic Policy Council directed the Working Group on Intellectual Property to draft and publish in The Federal Register a questionnaire soliciting information on altering the existing Customs Service policy that permits gray market goods to enter the United States where the American and foreign rights to a product trademark are owned by the same or related entities or individuals. Specifically, the Council requested information on the relative merits and costs of requiring that such products be labeled or "demarked", primarily to address consumer-related and free-rider concerns.

The Working Group has not yet published the questionnaire. However, on May 6, the Federal D.C. Circuit Court of Appeals in Coalition to Preserve the Integrity of American Trademarks v. United States held that the Customs policy, based upon its interpretation of section 526 of the Tariff Act of 1930, is invalid. Barring a rehearing by the Appeals Court (an unlikely prospect), the Court will remand the case to the District Court with instructions to issue a declaratory judgment that the Customs Service regulations are unlawful.

In view of this fundamental turn-of-events, the question for the Administration is whether to continue to consider refinements, namely labeling or demarking, to the Customs policy permitting gray market goods, even though that policy may ultimately be reversed, i.e., should the Appeals Court opinion go unchallenged and become final, gray market goods would be prohibited from entering the United States. A split on the matter already exists in the Federal Circuits, making Supreme Court review on the issue more likely.

Recommendation

A majority of the the Working Group recommends the Administration pursue the following course of action.

Move forward, as previously planned, to solicit through the Federal Register information on the merits and costs of labeling and demarking, but revising the draft to recognize the potential implications of the COPIAT case.

-2-

- o Irrespective of the final outcome of COPIAT, the Administration nonetheless requires information on the merits and costs of labeling and demarking to guide it in making a decision and, if necessary, drafting implementing legislation.
- o If the Appeals Court holding in COPIAT becomes final and the Administration does not seek Supreme Court review, gray market goods will likely be prohibited.
- o If that occurs, and the Administration seeks subsequently to restore the Customs policy permitting gray market goods or a policy requiring labeling, we would have to seek implementing legislation.
- o On the other hand, if the Appeals Court holding in COPIAT is overruled, e.g., by the Supreme Court, the Administration still eventually must seek legislation should it decide to require specifically that gray market goods entering the U.S. should be labeled.

Supreme Court Review

The Solicitor General will be formulating a decision as to whether to seek Supreme Court review of the COPIAT decision. Any comments to the Solicitor General by interested agencies should be made through existing, traditional channels.

- o If the private defendants in COPIAT, and/or the Solicitor General request and receive a review by the Supreme Court, the Customs policy permitting gray market goods could be upheld.
 - If the Solicitor General requests review by the Supreme Court, the chances are improved that the Supreme Court will agree to hear the case.
 - If the Second Circuit Court of Appeals, which is considering a similar case in Olympus v. United States, upholds the Customs policy permitting gray market goods, this will further improve the chances that the Supreme Court will agree to review the issue.